

IRA's Can be Protected from IOUs when Bankruptcy Hits

By Reg P. Wydeven
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When you turn on your TV, if you channel surf long enough, chances are you'll be able to find coverage of some high-profile lawsuit.

Some reporters dedicate weeks or even months to covering just one case. It seemed like the trials and court hearings involving Scott Peterson, Terry Schiavo, Robert Blake and Michael Jackson were being discussed constantly.

But the high-profile trial that started this trend and put Court TV on the map was definitely the O.J. Simpson murder trial. Because I was in law school at the time, following this case was especially interesting to me. I'll never forget when a classmate was running up and down the halls of the school shouting, "The Juice is loose!" after the verdict was read.

Although he was acquitted of murder, O.J. still was sued in civil court by the families of Nicole Simpson and Ron Goldman. The families sued for monetary damages for their deaths, allegedly at the hands of O.J. Because a civil suit does not require proof beyond a reasonable doubt like in a criminal trial, the families were able to prove O.J. killed Nicole Simpson and Goldman and they prevailed in their lawsuit.

While O.J. was a huge celebrity due to his successful NFL career, various TV and movie roles, and product endorsements, Nicole Simpson and Goldman's families didn't get all of the millions of dollars they were seeking. O.J. had spent a huge portion of his savings on defending his criminal and subsequent civil lawsuits. He still was able to maintain his swanky, golf-filled bachelor lifestyle because O.J.'s NFL pension was completely shielded from his creditors, including the families of Nicole Simpson and Goldman.

Pensions, 401(k)s, Social Security payments and other benefits tied to age, illness or disability are afforded protection under bankruptcy law. Thanks to a decision of the U.S. Supreme Court last week, Individual Retirement Accounts, or IRAs, are now also granted that same protection in bankruptcy.

This is an extremely important decision, especially given the uncertain future of Social Security and the fact that most of us don't have an NFL pension to rely on when we retire.

U.S. residents are allowed to contribute up to \$4,000 of earned income each year into IRAs that will grow tax-free until the funds are withdrawn. For some self-employed or small business owners, IRAs are their only retirement plan option. Investors are allowed to make cash withdrawals from their IRA for any reason at any time, however, a 10 percent penalty tax will apply if they are under age 59½.

Some American courts have held that because IRAs can be withdrawn early, unlike pensions or 401(k)s, they should not be afforded the same protection as those retirement plans in bankruptcy.

The Supreme Court disagreed when it decided in favor of Richard and Betty Jo Rousey of Berryville, Ark. The Rouseys accumulated \$55,000 in a company-sponsored pension and 401(k) plans. Richard took early retirement in 1998 and when Betty Jo was laid off a month later, they rolled the funds over into IRAs. The Rouseys were then unable to hold down new jobs and were forced to file for bankruptcy.

Although the court held the Rouseys IRAs are not subject to the bankruptcy, something tells me they still won't be making any tee times with the Juice.

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